THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P.No. 21831 of 2006

DATE: 08-11-2006

Between:

Y. Mallikarjuna

..Petitioner.

And

Depot Manager, A.P.S.R.T.C.,
Rayadurg Depot, Anantapur,

..Respondents

THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P.No. 21831 of 2006

O R D E R:

This writ petition is filed to issue a writ of Mandamus to declare the action of the respondents in attaching salary of the petitioner without following the procedure laid down under Section 60(i) and Order XXI Rule 48 (2) of the Code of Civil Procedure, 1908 (for short 'the CPC') as arbitrary and illegal and consequently direct the respondent to follow the procedure prescribed under Section 60(i) and Order XXI Rule 48 (2) of the CPC in attaching the salary of the petitioner.

The facts in brief are that the petitioner is working as a Coach Builder in the respondent-Corporation. The petitioner stood as guarantor in the Chit Fund companies for the loans obtained by his friends. Since the principal borrowers committed default in payment of the chit amounts, the Chit Fund companies filed civil suits being O.S.Nos. 1042 of 1998 and 794 of 2000 on the file of Principle Junior Civil Judge, Anantapur for recovery of the amounts due. The suits were decreed ex-parte. In execution of the decrees, the decree holders filed E.P.No. 226 of 2004 in O.S.No. 1042 of 1998 and E.P.No. 498 of 2004 in O.S.No. 794 of 2000 seeking attachment of salary of the judgment debtors (petitioner and others). The learned Judge issued

warrants of attachment of salary of Rs.1500-00 and Rs. 2000-00 in the above said two execution petitions on 28-08-2006 without observing the salary particulars of the petitioner. In pursuance of the warrants of attachments, the respondent deducted a sum of Rs. 3,555-00 from the salary of the petitioner. The petitioner states that a memo dated 25-09-2006 was sent through his counsel not to deduct salary without considering his livelihood, but of no avail. Hence the writ petition is filed.

Counter affidavit is filed by the respondent alleging *inter alia* that the Principal Junior Civil Judge, Ananthapur issued order of attachment for an amount of Rs.19,846-00 from the salary of the petitioner at the rate of Rs.1500-00 per month with effect from September, 2006 in E.P.No. 226 of 2004 in O.S.No. 1042 of 1998 filed by M/s. Margadarsi Chit Fund Pvt., Ltd., Ananthapur, that in another E.P.No. 498 of 2004 in O.S.No. 749 of 2000 it was ordered to recover an amount of Rs.20,811-00 at the rate of Rs.2000-00 per month from the salary of the petitioner in an execution petition filed by B.S.N. Chits and Finance Ltd., Ananthapur; that in yet another E.P.No. 285 of 2003 in O.S.No. 140 of 2001, filed by Chalapathi Chit Funds Pvt., Ltd., Ananthapur a total sum of Rs.16,327-00 is recoverable at the rate of Rs.1000-00 per month from the salary of the petitioner . It is further averred that the respondent received Form-19 Salary attachment orders from the Principal Junior Civil Judge, Ananthapur wherein it was specifically mentioned that in default in sending the amount shown in the warrants, the salary of the drawing officer would be attached. It is also submitted that the respondent addressed a letter dated 22-09-2006 to the Principal Junior Civil Judge informing that the amounts shown in the warrants of attachment issued against the petitioner are more than his home take salary and requested to issue

further directions for implementing the orders of the Court in respect of warrants of attachment of salary of the petitioner.

Heard the learned counsel for the parties.

The contention of the petitioner is that as per Section 60(i) of CPC the salary attachable of an employee is to the extent of the first one thousand rupees and two thirds of the remainder {in execution of any decree other than a decree for maintenance} is relaxable. The proviso to Section 60(i) of the CPC provides that where any part of such portion of the salary, as is liable to attachment, has been under attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months; and where such attachment has been made in execution of one and the same decree, shall after the attachment has continued for a total period of twenty-four months, be finally exempt from attachment in execution of that decree. Order XXI Rule 48(2) provides where the attachable proportion of such salary or allowances is already being withheld and remitted to a Court in pursuance of a previous and unsatisfied order of attachment, the officer appointed by the appropriate Governments in this behalf shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.

It is no doubt true that the warrants of attachment have been issued by the Civil Court in execution of decrees passed against the petitioner for realization of the decretal amounts. One of the modes for realizing the amounts to satisfy the decree is attachment of salaries, if the judgment debtor is an employee. Certain guidelines are provided in the CPC to be followed for attaching the salary of the judgment debtors. The employer of the petitioner i.e., respondent has deducted a sum of Rs.3,555-00 from the home take salary of the petitioner in the

month of October, 2006 and he received only a sum of Rs.269-00. The only recourse to the petitioner is to approach the civil court, which issued the warrants of attachment; instead, the petitioner approached this court under Article 226 of the Constitution of India. In the circumstances, it is proper to direct the petitioner to approach the civil court, which has passed the warrants of attachment and raise all the contentions whatever he has raised in this writ petition. The respondent is also directed to file an affidavit before the civil court indicating the attachment orders passed by different courts and the amounts that they are being recovered from the salary of the petitioner by virtue of the said attachment orders. It is needless to say that the civil court will definitely consider the objections raised by the petitioner and pass appropriate orders.

With the above observations, the writ petition is dismissed. No costs.

N.V. RAMANA, J

Dated: 08 -11-2006
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